IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH,

AT HYDERABAD

HON'BLE SRI JUSTICE V.V.S. RAO

W.P. No. 19614 OF 2005

Date: 05.09.2005

BETWEEN:

K. L. Narasimha Murthy

.... PETITIONER

Vs.

The Commissioner,

Alwal Municipality,

Ranga Reddy District.

.... RESPONDENT

HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No. 19614 OF 2005

ORDER:

The petitioner is a resident of Alwal in Ranga Reddy District. He purchased plot No.14 along with the house of Hanuman Nagar Colony, Venkatapuram, Alwal Municipality, under a registered sale deed dated 4.12.1997 from one Mr. O. Samuel, who after purchasing the plot constructed a house in the year 1996, which was regularized by the respondent Municipality by proceedings dated 15-10-1996. It is stated that since then the petitioner has been residing in the said house and regularly paying the municipal tax.

The respondent issued the impugned notice dated 12-8-2005, which is self-explanatory and reads as under:

> The President of Hanuman Nagar Colony Habitation Committee submitted a representation vide reference cited duly enclosing a copy of layout plan wherein it is stated that the colony roads and parks are being encroached by unauthorized constructions and requested this office for taking action on the said constructions.

Acting upon the said representation, this office staff visited Hanuman Nagar Colony, verified and measured the existing houses with reference to the layout plan. It is found that Sri s. Narasimha Murthy, has encroached on the road of road beyond his plot area.

Therefore, Sri S. Narasimha Murthy is hereby directed to remove the said illegal encroachment within (3) days. Otherwise, this office will remove the same and expenses so incurred will be recovered from the encroached.

The above notice is issued under Sections 192 and 37 of the A.P. Municipalities Act, 1965 (for short 'the Act') calling upon the petitioner to remove the illegal encroachment within three days and the same was not preceded by any notice. Therefore, it is rightly contended by the learned counsel for the petitioner that if only a notice would have been issued, the petitioner would have placed all material before the respondents to show that his possession does not amount to encroachment.

After hearing the learned counsel for the petitioner and the learned Standing Counsel for Municipalities, this Court is of the considered opinion that though Section 192 of the Act empowers the Commissioner to remove the encroachments, it does not specifically provide for issue of prior notice. Such a notice has to be read into the said provision so as not to render Section 192 of the Act unconstitutional. Indeed, Section 194, which deals with eviction of encroachers, contemplates issuance of a notice, and therefore, the impugned notice dated 12-8-2005 can be treated as a notice giving liberty to the petitioner to make a representation within a period of one week from the date of receipt of this order enclosing all necessary material. As and when such representation is made, the respondent should consider the representation/explanation and the evidence that may be produced by the petitioner with reference to municipal record and pass appropriate orders as to whether the petitioner has encroached upon the road beyond his plot area as alleged by the President of Hanuman Nagar Colony Habitation Committee. Till then, there shall be status quo.

The writ petition is accordingly disposed of at the admission stage in the above terms.

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(**V.V.S. RAO, J.)**

5th September, 2005

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